

Chesapeake Bay Local Assistance Board
Policy Committee
Chesapeake Bay Local Assistance Department
101 N. 14th Street, 17th Floor, James Monroe Building
Richmond, Virginia

Tuesday, October 29, 2002

Committee Members Present

The Honorable Frank L. Benser
The Honorable Anna Lee Bamforth via teleconference
The Honorable Donald W. Davis

Committee Members Absent

Staff Present

C. Scott Crafton, Acting Executive Director
Martha Little, Chief, Environmental Planning
Lee Tyson, Principal Environmental Planner
Doug Wetmore, Principal Environmental Planner
David Kovacs, Principal Environmental Planner
Shawn Smith, Principal Environmental Planner
Ron Wood, Agricultural Program Manager
Carolyn Elliott, Administrative Assistant

Mr. Benser called the meeting of the Policy Committee to order at 10:10 a.m. He noted that two of the three members of the Committee were present, constituting a quorum, and Ms. Bamforth would also be considered present participating via teleconference.

Mr. Crafton updated the Committee members regarding the Governor's budget reduction impacts, noting that as a part of the 6.8 percent budget cut, the Water Quality Monitoring Manger position, Dr. Ram Gupta, would be laid off at the end of December. He went on to note that even though the position was eliminated, the funding to continue the water quality monitoring was kept through June and that he was exploring whether this activity may be continued by Dr. Gupta as a P-14 during that period.

Mr. Davis asked Mr. Crafton if Dr. Gupta was willing to accept a part-time position. Mr. Crafton responded that it would be Dr. Gupta's decision after reviewing all of the particulars.

Mr. Crafton advised that he had been working closely with the Secretary of Natural Resources and Mr. Joe Maroon, Director of the Department of Conservation and Recreation (DCR) in order to provide to the Governor a plan to consolidate the Chesapeake Bay Local

Assistance Department (CBLAD) into the Department of Conservation and Recreation as a separate Division, tentatively to be called the Bay and Coastal Programs Division. He said that a draft of the consolidation is due the first of next week. He reminded everyone that the Governor's budget cuts were only about half of what is needed for the Commonwealth and that his update could change from this date to the end of the General Assembly in 2003.

Mr. Davis asked Mr. Crafton how the JLARC Report would affect the agency's position.

Mr. Crafton responded that the report was generally favorable and that it had been suggested among other things that the local grant funding should be restored when the state's budget situation improved. He also noted that JLARC had encouraged that CBLAD remain separate. However, after the Wilder Commission [streamlining list was published, the Secretary of Natural Resources was moving forward with plans to merge CBLAD into DCR.

Mr. Crafton advised the Committee members that Sue Fitz-Hugh and David Fraggott had been appointed as members to the Board replacing Cliff Schroeder and Dama Rice, respectively.

Mr. Davis asked if they would be attending the December meeting. Mr. Crafton responded that they had been invited to the December meeting as well as the Southern Area Review Committee Meeting that would be meeting later in the day. Mr. Crafton also reminded the Committee that December is the time for the election of Chair and Vice Chair of the Board and that both positions would be open. He asked that the Committee begin thinking about whom they would like to nominate for these positions.

Mr. Benser thanked Mr. Crafton for the budget update and recognized Mr. Ron Wood for staff's presentation for the draft guidance, Agriculture: Soil and Water Conservation Assessment.

Mr. Wood noted that the changes in the Regulations effective March 1, 2002 included three major agriculture changes. He said the first allowed for a preliminary soil and water conservation assessment to be performed prior to the development of a soil and water conservation plan.

He said the second change in the Regulations spelled out more clearly a compliance schedule for those land owners and agriculture producers that refuse assistance for the local conservation planners. He noted that these planners were typically local Soil & Water Conservation District staff. He also noted that the compliance schedule was in accordance with the compliance schedule of the Agriculture Stewardship Act that is administered by the Virginia Department of Agriculture and Consumer Services.

He said the last major change in the Regulations that prompted the new guidance says that when agriculture uses cease on a property, the full buffer shall be reestablished.

He noted that he had forwarded the draft guidance to the Department of Conservation & Recreation, the Department of Environmental Quality, VDACS, Cooperative Extension, VASWCD's, Virginia Farm Bureau, the Chesapeake Bay Foundation, Virginia AgriBusiness, and seven local bay program contacts. He noted that he did receive substantive comments on

buffer guidance, mapping, and defining agricultural activities that were pulled back and the only thing before the committee was the conservation assessment guidance.

Mr. Wood advised that there were very few comments. DCR and NRCS commented on the proposed definition of agricultural activities. However, due to substantive comments from CBLAD staff, that guidance will not be released at this time.

Ms. Bamforth asked about BMP maintenance. Mr. Wood responded that BMP maintenance is typically spelled out in the conservation plan that is approved by the local SWCD Board. Ultimately, compliance checks are the responsibility of the locality. Additionally, if the BMP is funded via state or federal funds, those programs call for random compliance checks.

Mr. Davis commented that Mr. Wood said the buffer must be reestablished after the activity ceases. He asked what happens when there is no buffer there before?

Mr. Wood explained that the guidance for that situation had not been established.

Mr. Crafton explained that if the farmer historically plowed down to the 25 feet from the stream and he is using his conservation plan as his justification, if the land use changes then the buffer needs to be re-established, based on Department guidance.

Mr. Davis said he understood that the buffer needed to be reestablished but that the guidance has not been developed on how to do that. Mr. Crafton agreed to Mr. Davis' understanding and noted that the Department would address this issue in the Buffer Handbook under development.

Mr. Crafton went on to say that because there are federal conservation programs, and DCR has conservation programs, and nutrient management plans apart from the CBLAD programs, CBLAD's goal is to achieve some efficiency by assessing what BMPs the farmer already has implemented. He said that if the farmer already has a plan then it would be incorporated by reference.

Mr. Benser brought himself up to speed regarding the membership of the local SWCD's Technical Review Committees. He asked if all of the recommended members listed were available in all of the localities?

Mr. Wood responded that he was uncertain about the cooperative extension agents due to the budget cuts. However, the others should be available. Mr. Benser expressed concern many of these listed people do not routinely meet with the district staff to review plans. Mr. Wood offered to investigate the existence of the extension agents before the December Board meeting.

Mr. Crafton suggested that they may want to review the membership list. Mr. Benser asked Mr. Wood if he would be available to attend all of the localities meetings. Mr. Wood commented that his availability would depend on continued funding for his position.

Mr. Benser also questioned the sentence..."In these cases, local SWCD Board approval will be documented during the next scheduled Board meeting...and that is fine, however, in the conclusions that is not clear. He said that this needed to be spelled out in the conclusion. Mr. Wood agreed. Mr. Benser also commented that the conclusion section would be where most people would go first for guidance.

Mr. Benser asked if there needed to be a little work done on this guidance before it was voted on. Mr. Crafton suggested that the Committee vote to recommend the guidance to the Board with the changes that had been identified and provided to the Board members prior to the Board meeting.

Mr. Davis motioned to have the draft Agricultural Operations: Soil & Water Quality Conservation Assessment/Plans Guidance with the recommended amendments go before the full Board for approval in December.

Ms. Bamforth seconded.

Mr. Benser asked for further discussion. There was none.

Mr. Benser called for the vote. All members voted aye.

Mr. Benser recognized Mr. Lee Tyson to present the draft guidance, Resource Protection Areas: Permitted Development Activities.

Mr. Tyson noted that the document before them provided guidance regarding the section of the regulations regarding redevelopment activities within RPAs and other development activities that are permitted by right within the RPA. He said that with respect to water dependent uses, the regulations permit those uses in RPAs because by their very nature they have to occur adjacent to the water.

Mr. Tyson went on to discuss redevelopment activities within RPAs that do not occur within designated IDAs. He said that redevelopment activities are permitted to occur within the RPA even if they occur outside of a designated IDA. He further noted the definition of redevelopment in the Regulations as "the process of developing land that had previously been developed." He said that in the traditional view of redevelopment, old dilapidated or outdated structures and impervious areas are demolished or removed and reconstructed on the same site as the previous structure.

He said that the following conditions must be present in order for a project to be considered as redevelopment in areas not included in an IDA: the lot or parcel has been previously developed; the new structures and/or impervious areas are located in the same physical location as the previously existing structures and/or impervious areas; the proposed amount of impervious surface is approximately equal to or less than the original development; and the RPA is not further encroached upon.

Mr. Tyson went on to say that, for the purposes of the Regulations, redevelopment is not the following: new construction on a previously undeveloped parcel; additions or expansions to existing structures; replacement of a structure lost by casualty; and, relocation of an existing structure to a previously undeveloped portion of a site. He also advised that staff had used the same graphics from a previous information bulletin, and that the drawings represent the various scenarios of what is and is not to be considered as redevelopment.

Mr. Tyson continued by addressing the issue of development or redevelopment within an Intensely Developed Area, noting that Intensely Developed Areas are by their very definition redevelopment areas. He further noted that development is also permitted within an IDA to accommodate a vacant lot that may exist in an otherwise developed area. He stated that within IDAs designated by the local governments and approved by the Board to meet the criteria found in the Regulations, both redevelopment and development activities can occur. He noted that there would be a separate IDA guidance document forthcoming, so he had not provided much discussion in his guidance document relating to IDAs.

Mr. Tyson discussed development on a nonconforming lot of record, noting that these lots were either approved by the locality and recorded before October 1, 1989 and do not have sufficient land outside of the RPA on which to construct a principal dwelling, or lots with insufficient land area outside the full 100 foot RPA that were recorded between October 1, 1989 and March 1, 2002. He went on to explain that the second situation would only apply in those localities that had the old buffer equivalency language written into the local CBP Ordinances. He said that the guidance regarding development on nonconforming lots of record was included in the document adopted by the Board in September, entitled Resource Protection Areas: Buffer Area Encroachments.

Mr. Tyson continued his presentation by noting that stormwater or flood control facilities that drain or treat water from multiple development projects may be permitted in the RPA provided that certain criteria are met. He went on to provide an overview of the requirements for these facilities to be allowed by right within the RPA. He said that more detailed discussion of the regional stormwater management requirements contained within the Chesapeake Bay Designation and Management Regulations would be developed at a later time.

Mr. Tyson said that certain uses are exempt from the Regulations, including water wells, passive recreation sites, and historic or archeological sites. He noted that the Regulations do include certain criteria that must be met in order for them to be exempted, including the requirement that they be approved by the local government and that erosion and sediment control measures are in place. He concluded by stating that most public utilities and roads are exempted from the Regulations as well and briefed the Committee on the conditions that are required for their exemption.

Mr. Tyson finished his overview by noting that the conclusion section of the guidance provided a summary of the guidance in bulleted form.

Mr. Davis commented that the Regulations were adopted last year and some of the things that concern him are that there seemed to be a change of the intent of the Regulations. He said

that one of his particular concerns related to marinas. He said that what the regulations are saying now is that a marina is a docking structure, boat ramps, etc. However, when he reads a definition of a marina, it typically included ships' stores, boat storage facilities, a park, and a wide array of accessory uses that go with marinas. Mr. Tyson agreed.

Mr. Davis went on to say that these uses have now been limited to docking facilities and staff is saying that everything else has to be outside of the RPA. Mr. Tyson said that the position is that facilities that are intrinsic to the operation of a marina including docks, piers, boat storage, repair facility, harbor master's office, etc., are going to be a part of the water dependent activity. However parking areas, swimming pools, and other accessory uses have to be outside the RPA. Mr. Tyson noted that this has always been the Department's guidance.

Ms. Bamforth and Mr. Tyson agreed that this position was not new. However, Mr. Davis stated that the issue was not whether it was new but rather that it needed further discussion. He said that there are issues and one of them is what is a marina, and there are others also. Do accessory uses form the total body of a marina, and what was approved in the Regulations does not say what Mr. Tyson is currently saying. He said that he is concerned that we are changing the definition from what had been said in the Regulations versus what is being said in the guidance.

Mr. Crafton and Mrs. Little stated that the agency has been consistent over the years in interpreting marina related questions. Mr. Crafton went on to say that he agreed with Mr. Davis that the Regulations did not include this level of detail; those things have been established by track record and the Department has never been challenged on them. Mrs. Little stated that the definition of water dependent uses is clear in the Regulations.

Mr. Tyson asked Mr. Davis about the other concerns and requested he identify those concerns. Mr. Davis questioned why a parking area couldn't be close to the dock for someone who needs to get supplies out of their car. He went on to inquire about boat storage and to say that the exception process did not give much latitude for an exception for a marina that may be on a small parcel of land, or an existing marina. He said that in the case of an existing marina, if they wanted to expand it by one parking space or if zoning required additional parking, then there would be no room to add the parking to existing parking lots the parking areas would have to be separated.

Ms. Smith stated that if an existing marina was located on a small parcel of land and needed additional parking because it recently expanded the number of boat slips, then she did not believe that it would be difficult for such a request to be approved as an exception. Ms. Smith also stated that staff had been consistent in providing guidance to local governments on the various water dependent components of marinas.

Mr. Tyson provided an example to the Committee regarding a marina in Colonial Beach that had been lost to fire. He said that in that case, he believed that the reconstruction of the marina would be permitted but that non-water dependent portions of the marina should be located outside of the RPA. He also noted a similar case in Isle of Wight County where a marina had been damaged. Mr. Tyson said that staff advised the County that all of those portions of the

marina that were not intrinsic to the operation of a marina had to be placed outside of the RPA and that the facilities that are associated with marina operation can be replaced where they had previously been located.

Mr. Davis commented that he could not see the guidance as saying that, and that the guidance is not specific and inclusive enough in listing the kinds of facilities that qualify as water dependent and those that don't.

Mr. Tyson said that it would be easy to amend this section to address Mr. Davis' concerns.

Mr. Davis asked if there had been any comments about aquaculture facilities.

Mr. Tyson said the discussion of aquaculture facilities had been included due to an earlier conversation about peeler sheds for soft shell crabs. He noted that peeler sheds need a continuous supply of fresh water and that staff believes peeler sheds are a water dependent facility. He stated that other facilities associated with aquaculture, such as packinghouses are not water dependent facilities because the products can be transported to an offsite location for packing.

Mr. Tyson stated that staff did not receive any comments on aquaculture.

Mr. Davis went on to discuss the sketches illustrating acceptable and unacceptable redevelopment in RPA's. He noted some sketch labels that he considered misleading or inaccurate regarding what the regulations actually say. He indicated that staff needed to be careful how issues are represented, because some localities can be very rigid regarding CBLAD guidance, when some flexibility is actually okay.

Mr. Tyson explained that the reason the second graphic depicts a redevelopment activity that is not acceptable is because the new development is encroaching further into the RPA and that this is explicitly prohibited in the Regulations. Mr. Davis asked that the top part be removed that is outside the RPA.

Mr. Crafton said the issue has long been that when redeveloping, the imperviousness should not be expanded. Mr. Tyson offered to remove that portion of the drawing that extended into the RMA, outside of the RPA.

Mr. Davis went to say that he was concerned about the existing footprint and that what is being said is that the footprint is not going to be increased, and the exception process says that you cannot increase that footprint, and it is very difficult to get an exception for these.

Mr. Tyson agreed with Mr. Davis and stated that through the exception process you could expand the footprint if you could meet the hardship clause in the findings required for exceptions. He said that this guidance was dealing more with uses permitted by right within the RPA and therefore they don't have to go through the exception process. Mr. Tyson, Ms. Smith

and Ms. Little explained that this guidance is also consistent with the staff's interpretation and further that the Regulations were not amended relative to this issue.

Mr. Davis commented that while staff may have interpreted the guidance in this manner it was now time to put it in writing, and in the real world, property is typically not nice and square, where you have a nice parallel line from the water to the back property line. Mr. Davis went on to say that once this guidance is at the local level it will become the law and you cannot change it or the localities won't feel that they can change it.

Mr. Davis said that he was also concerned about what is being said about casualty loss such as fire, flood, etc., that if they build again there are no grandfathered rights. Mr. Tyson said that the issue had come up with the marina in Isle of Wight County and that zoning ordinances generally include provisions for casualty loss. For instance, he stated that some local zoning ordinances say that if there is a loss over a certain value, such as 50 or 75 percent of assessed value, a piece of property loses its grandfathered rights. He noted that the guidance stated that an individual may have the right to rebuild a structure that is lost to casualty, but that would not be called redevelopment.

Mr. Davis asked if there was a section that referenced the percentages. Mr. Tyson said there was not because this was a local issue and that this is addressed in various ways by different local zoning ordinances.

Mr. Crafton suggested that it might be good to have a clearer reference.

Ms. Smith went on to explain the specific citation in the Regulations that would permit, under the Regulations, the reconstruction of pre-existing structures within Chesapeake Bay Preservation Areas that have been subject to casualty loss. Mr. Benser commented that it needed to be considered that a locality may not have reference to this ordinance.

Mr. Tyson said that he would expand the bullet to reference the nonconforming provisions of the Regulations that allow for reconstruction of nonconforming structures lost by casualty, provided that they are not in conflict with the local zoning ordinance.

Mr. Davis went back to the regulatory reference that only dealt with preexisting structures and did not deal with other impervious improvements. Mr. Tyson said he could not think of an example that wasn't a structure, and Mr. Davis commented, a parking area. Discussion followed regarding the possibility that the parking area was not totally destroyed but needed to be rebuilt. Mr. Davis went on to explain that there are 84 localities interpreting this 84 different ways.

Mr. Crafton said that what he was hearing was that if the guidance is not expansive enough and is read too rigidly locality, you could be dealing with a locality that is preventing you from doing that CBLAD would say is okay.

Mr. Benser suggested that the guidance could say replacement of structure lost by casualty per local ordinance. Mr. Tyson offered to give consideration to how this would read most effectively.

Mr. Crafton said that it is probably not a good idea to be so specific that everybody has to do things only one way. He said that staff was trying to provide flexibility and expand the reference. Mr. Davis said he would like to see this rewritten for better clarification.

Ms. Bamforth asked a question regarding marina in Isle of Wight County. She asked if the County called because it was lost by casualty. She went on to ask about the fire being so extensive that they could not fall under redevelopment. Mr. Tyson said that he advised them to consider its reconstruction without calling the activity redevelopment. He said that, in any case, the marina facility is a water dependent use and is permitted under the Regulations.

Ms. Bamforth also asked about redevelopment where there are old, dilapidated structures but that over time, someone may remove these old existing structures one at a time before the owner is ready to redevelop the entire parcel. She wanted to know how many years should someone go back to determine existing impervious coverage on a lot for redevelopment purposes. Mr. Tyson said that as far as he knew CBLAD had never been that specific.

Mr. Benser and Mr. Davis said that generally, two years are in the zoning regulations

Mr. Tyson recapped the changes he had heard the Committee recommend. He stated that under water dependent uses, he understood the Committee was suggesting a more expansive explanation of what types of facilities are considered for the water dependent portion of marinas. Mr. Davis asked Mr. Tyson to please look at the definition in the dictionary because it does include some the things that had been discussed.

Mr. Tyson noted that on page 2 where it says "redevelopment is not replacement of a structure lost by casualty" he understood the Committee recommended referencing the nonconforming use provisions in local land use ordinances.

Mr. Tyson said that on page 3, he understood the Committee to want the diagram showing expansion into the RMA to be revised to remove depiction of expansion into the RMA. Mr. Davis also asked that changes to be made to reflect revising the title to read "not acceptable as redevelopment".

Ms. Bamforth asked about the reference on page 4, specifically the exemptions for private roads or utilities. Mr. Tyson said the Regulations refer to public roads and utilities. Ms. Smith noted that private roads and drives are permitted in the Regulations, providing criteria are met.

Mr. Michael Toalson, Executive Director of the Home Builders Association of Virginia, said that he was disappointed on the part of staff for failing to reach out to organizations like his to discuss the guidelines prior to their presentation to the committee. He said that obviously these guidelines would have a significant impact on redevelopment activities, especially in an

effort to comply with the Chesapeake 2000 Agreement. He said he was going to ask that any consideration of the guidelines be deferred until the next meeting of the committee or consider having staff meet with stakeholders before the presentation. He said that while they are only guidelines, they are going to significantly impact the way local governments implement the regulations.

Mr. Crafton asked staff if the guidelines could be postponed for another cycle. Ms. Little felt a need to get the guidance out to the localities as soon as possible. Mr. Davis asked for another meeting. Mr. Crafton noted the problem would be getting another meeting noticed and conducted prior to the December meeting of the full Board.

Mr. Benser said that he felt that it was difficult to tentatively recommend the guidance for approval subject to whatever changes may need to be made after meeting with the other groups, therefore it would probably be better to defer.

Mr. Davis felt that the guidelines needed to be revisited and cleaned up, and he would recommend deferral. Ms. Bamforth agreed to recommend deferral.

Mr. Davis motioned that redevelopment guidance be deferred until another meeting of the policy committee can be scheduled.

Ms. Bamforth seconded the motion.

Mr. Benser called for further discussion. There was none.

Mr. Benser called for the vote. All members voted aye.

Mr. Benser called for the presentation of the draft guidance, Resource Protection Areas: Onsite Nontidal Wetland Delineation, and recognized Ms. Shawn Smith. Ms. Smith said that the guidance was a basically a reworking of old Information Bulletin #6 which outlined the nontidal wetlands that are required to be included in the RPA. She said the guidance outlined the Department's previous interpretation of "contiguous and connected by surface flow" with respect to those nontidal wetlands that must be included as part of the RPA. She continued by outlining additional information in the draft guidance relating to nontidal wetland systems adjacent to water bodies with perennial flow but separated from these water bodies by channel levies. She noted that the guidance on nontidal wetlands adjacent to but separated from water bodies by channel levies was based on guidance the Department has provided to local governments. She said the third part of the guidance outlined some optional RPA components such as nontidal wetlands along intermittent streams. She said that nontidal wetlands along intermittent streams are important in water quality protection and cited a growing body of scientific evidence that supported their importance. She also stated that the inclusion of intermittent streams themselves as an optional RPA component would also help to further protect water quality and noted the evidence that supports their relation to water quality protection. She stressed that these two components are options for local governments and in no way are required for inclusion as RPA components.

Ms. Smith concluded by stating that the only new guidance with respect to required RPA components related to those nontidal wetlands separated from a river or large creek by natural channel levy and reiterated that this guidance was based on interpretations that had been provided to several local governments as needed.

Mr. Davis asked about the connection to perennial flow. He said that he would like to see the definition written down somewhere. He went on to say that there is a definition that the Society of Professional Surveyors and Civil Engineers use, and asked if staff had seen that definition. He said that he believed it important to define the term. He said that it would have significant impact depending on the definition.

Mr. Crafton stated that there had been attempts made to define it during the Regulatory process, and the problem was that the water agencies did not agree what the definition is and no consensus could be reached among the various stakeholders. Mr. Davis said that there are several professional organizations that have come up with a definition, and he would provide a copy.

Ms. Harold commented that whatever the definition is, she would like to see it be something the Corps of Engineers would agree to.

Mr. Toalson said that there has been a struggle with the definition of intermittent streams as well as perennial flow, and it was his understanding that neither of these terms have a definition, which should make CBLAD cautious about providing guidance on a subject that did not have a definition.

He said he was also concerned about the encouragement that the document gave localities to include nontidal wetlands and other things such as intermittent streams within the RPA component. He said he did not believe it was the role of either the Board or staff to encourage that. Mr. Toalson referenced Page 1.

Mr. Toalson's other comment referenced Page 4 where there was a reference to a court case, and that the statement was taken out of context in the next paragraph regarding designating wetlands along intermittent streams. He said that he was very concerned about the impacts of this proposed guidance document on development and property rights of Virginians.

Mr. Toalson also talked about the 1987 Corps wetlands manual and the reference to the 1989 manual, which never received final approval by the Corps. He said that given the approval of the 1987 manual, it should be used, even though the 1989 is the latest issue. Ms. Harold commented that Norfolk staff indicated that they are using the 1989 manual and did not want to be precluded from using it. Mr. Crafton commented that the language could be finessed to be more in agreement with everyone.

Mr. Toalson thanked the Board for allowing members of the public to offer comments.

Mr. Davis noted that he had also highlighted a number of the issues Mr. Toalson had raised. He said that these are important issues and that it would be better to send this information

out to the stakeholders involved, get the comments in and perhaps consider some issues that had not been thought about.

Ms. Little asked the Board to identify which stakeholder groups they wanted staff to meet with. Mr. Crafton stated that staff could use the regular stakeholder list and distribute the guidance to them. Mr. Benser asked Mr. Davis if he had any significant issues that the staff needed to address. Mr. Davis noted the guidance pertaining to designations along intermittent streams, channel levees, and isolated or non-connected wetlands. Mr. Benser said he understood the concern.

Mr. Benser asked if Ms. Bamforth had any comments. She agreed with Mr. Davis about the intermittent streams and the issue of discontinuous or isolated wetlands as RPA features.

Mr. Davis motioned to defer action on the draft guidance: Resource Protection Areas: Onside Nontidal Wetland Delineation until the next policy committee meeting and after meetings are held with the stakeholders.

Ms. Bamforth seconded.

Mr. Davis suggested that the information be forwarded to the stakeholders and comments received prior to the next policy committee meeting so there wouldn't be any surprises.

Mr. Benser called for the vote. All members voted aye.

Mr. Benser called for the discussion regarding Intensely Developed Areas. Ms. Little advised that guidance had been drafted on the IDA that mirrored the previous guidance, however, staff received a number of concerns and issues that were presented by urban localities. She continued by noting that staff had provided the Board with a historical overview of IDAs at the last Board meeting for the purpose of providing the Board with an overall perspective on IDAs. She explained that several options had been discussed among agency staff and with the Hampton Roads localities in order to move forward to resolve the IDA issue. She mentioned that one option would be for the Board to make a significant policy change with respect to IDAs. Another option would be to undertake a regulatory change to better address the HRPDC localities concerns. Some local governments have expressed concerns about the possibility that they would be inundated with requests for accessory structures in the RPAs. Mrs. Little said staff believed that it would be important for these localities to implement the requirements of the revised Regulations and then establish whether their perception of the issue becomes a reality. She stated that staff believed that once local Bay Act ordinances had been revised, it is possible that a locality may not receive as many exception requests for accessory structures as they now expect.

She said that staff agreed to continue to work with the HRPDC localities and explained that an additional meeting was held to discuss this issue on October 17, 2002. She noted that Department staff had concluded that the best option for addressing the accessory structure issue would be a regulatory change, and it was anticipated that a regulatory revision process would take from six to nine months. She went on to reiterate that, based on the existing IDAs, and the

current language in the Regulations, that the IDA provisions do not address the concerns that the HRPDC localities had brought forward. She stated that at the October 17th meeting, Department staff was presented with a residential IDA paper that outlined the HRPDC localities' recommendation for residential IDAs. She noted that discussion during that meeting also included the question of whether a grace period could be given to localities after March 1, 2003 before they would need to implement the new exception process as the whole IDA issue was being resolved. She said another option was put forth by the HRPDC localities' at that meeting: to create a "general permit" for consideration of exception requests for accessory structures so that there would not be the need for individual hearings for each accessory structure request. Instead, the local government would hold one public hearing for their general permit, and if the request met the conditions of the general permit, staff could approve the request administratively. Mrs. Little indicated that the localities had said that they would speak to their legal staff about this option to see if local attorney's felt that this concept would be consistent with their local zoning codes. She further stated that Department staff would check with the Board's counsel from the Attorney General's office, Mr. Roger Chaffe (in attendance at this meeting) to see if he felt the concept was consistent under the Regulations. Ms. Little also stated that staff had asked that evidence be presented by the localities to indicate the magnitude of the problem that exception requests for accessory structures. For example, research by staff of the Newport News program indicated that there were actually only 8 requests for accessory structures in the RPA over approximately the past three years.

Mrs. Little also said that staff had asked that the localities provide a list of specific conditions to be met and mitigation to be required that would be attached to the general permit.

Mr. Clay Bernick, Virginia Beach Planning Department, introduced himself as the spokesperson for the HRPDC localities and noted that others from the Hampton Roads area such as Norfolk, Hampton and Newport News, were present and might want to speak. Mr. John Carlock, from Hampton Roads PDC was also introduced.

Mr. Bernick provided a copy of a position paper focusing on conditions that would be appropriate to place on requests for accessory structures in the IDA. He also provided a copy of a summary of the meeting on October 17th.

He said that guidance had been requested from local government attorneys as to whether or not the locality had the authority in the local ordinances to pursue a general permit concept. He said two of the localities have received affirmative answers -- the cities of Virginia Beach and Norfolk. He noted that Newport News, Hampton and Chesapeake were all still awaiting final feedback from their local attorneys.

Mr. Bernick also advised that each locality had done further research into how many requests could be expected from each community. He recognized Mr. Keith Cannady, of Hampton, who advised that their database indicated there were 69 requests in 2001, and 44 so far through 2002. He said that there is a lot of activity. Mr. Bernick also said that the City of Virginia Beach keeps a log of requests, and they are experiencing from 8 to 12 requests a month.

Mr. Tyson asked if the log differentiated between accessory structures and additions to principal structures. Mr. Bernick responded that the total was for both. Mr. Cannady advised that his figures would be about the same. Mr. Bernick said that approximately 2/3 of the requests are for accessory structures. Mr. Lee Rosenberg, City of Norfolk, said they are reviewing their records. However, he noted that there are 120 miles of Shoreline and most of the residential area is already in the 100 foot buffer area. Effectively, since encroachments are permitted in the landward 50 feet, and that is half the back yard where structures can be placed. Mr. Rosenberg said that this situation applied to most of the subdivisions in the City of Norfolk. Ms. Kathy James-Webb stated that in the case of Newport News, there were few exception requests for accessory structures, and most were for structures less than 150 square feet.

Mr. Davis asked if the requests were within the 50 or 100-foot buffer. Ms. Webb replied that the requests were primarily within the landward 50 feet, and they try to keep the waterward 50 feet clear unless the dwelling was within the 50 feet. She said that they require written justification for approval of accessory structures because of the gray zone.

Mr. Bernick commented that another complicating factor appears to be the identification of accessory structures that do not require a building permit. He said an example of that are paved walks or concrete patios on grade. He said there is no way to track how many of these are being constructed.

Mr. Davis asked if that was pretty standard for most localities. Mr. Bernick replied affirmatively, and the general permit may be a way to track those things that do not require a building permit.

Ms. Barbara McCallum provided a power point presentation of properties that predated the Regulations. Mr. Bernick noted that these subdivisions met all locality criteria.

Mrs. Little asked when one of these subdivisions was built. Mr. Bernick replied that it had been platted when the Regulations were just coming out, around 1991.

Mr. Bernick went on to say that the subdivision representation was typical of those being layed out during that time and that were permitted. He said he felt the most important question here, when they were looking at an IDA designation or general permit concept or a broader and more extensive change, is what process would afford the least intrusive administrative solution so that local resources could be used to accomplish the intent of water quality protection rather than administrative paperwork. He said that the use of a general permit would offer relief from the administrative paperwork typically involved with such requests.

Mr. Bernick spoke briefly about the notification of adjacent property owners when using a general permit, and that their attorney had approved its use, having one public hearing to address all the requests through specific procedures. He said he believes this idea will permit the localities to be able to work within the current Regulations.

Mr. Rosenberg pointed out that under the old Regulations, the lots would have been permitted. However, under the new Regulation amendments, the lots would not have been permitted and every one would have required an exception.

Mr. Davis asked if a homeowner comes in and asks for a shed exception, if the homeowner is being required to do BMPs and maintenance agreements. Mr. Rosenberg pointed out that the property is already being drained by stormwater drainage system, and the cost of individual site BMPs was unreasonable for the minor pollution control benefits that might be achieved. Instead, they prefer to find ways to enhance remaining buffers, etc.

Mr. Davis asked if there was a threshold square footage where BMP's do kick in.

Mr. Rosenberg stated that they were not seeing accessory structures of any size sufficient to make a major difference, and had seen more of this issue with shopping centers.

Mr. Davis asked if Norfolk and Hampton have both regional and onsite BMP agreements. Mr. Rosenberg said that the cost of BMP onsite is astronomical.

Ms. Webb talked briefly about the cost of effective BMPs in IDAs and how it relates to the lot versus the size of the accessory structure. If they find that the costs are not fair, they look at the landscaping and may ask that the homeowner make improvements such as a mulched landscaped area. She also stated that all commercial buildings have to go through this process.

There was some discussion about small BMPs and what could be reasonably charged to people versus what really works, and the Department of Environmental Quality had reviewed and approved other options for protecting water quality under VPDES permits for these city stormwater systems.

Mr. Tyson asked about the requirement of notification of other property owners when an application was going to be heard.

Mr. Rosenberg pointed out that the Regulations did not refer to an application. Ms. Little pointed out that it simply said a hearing and/or notice, one class of accessory structures, and therefore a homeowner came in and complied with the process.

Mr. Davis commented that as long as the homeowner came in, complied with the terms of the application, then the thought the process could be handled administratively. Mr. Bernick agreed. Mr. Davis said this would avoid having so many public hearings.

Mr. Crafton reiterated the importance of notification to adjacent property owners, and that most localities are taking a hard line on approving accessory structures. He said that staff understood the dilemma, and if it is found that the general application could be used, it would set a huge precedent. Mrs. Little commented that the purpose was to treat this exception like all other exceptions to the laws, i.e. variances to setbacks, etc. She said that adjacent property owners should have the right to be advised and to comment.

Mr. Bernick stated that he did not believe that causing the public grief over applying for an accessory structure was in the best interest of the public, and that their staff was not going to tell the public they could not have an accessory structure. He said that they were trying to find the best way to handle the process.

Mr. Davis commented that he appreciated hearing the comments and that the Regulations had to work at the local level. He said that there was considerable work that needed to be done before any changes can occur.

Mr. Joe Lerch, representing the Chesapeake Bay Foundation, stated that regarding zoning districts and the change in districts, there is an issue of impacting property owner rights. He said that he just wanted to bring property rights to everyone's attention.

Mr. Davis said that he would like to see an opinion from the agency's attorney.

Mr. Chaffe asked if Mr. Bernick could provide to his office a copy of their attorney's opinion in writing so that his office could review the document. Mr. Bernick agreed to provide the document as soon as possible.

Mr. Crafton said there is a possibility depending on getting the information from the locality attorneys that there could be resolution of this matter by the December Board meeting.

Mr. Benser thanked everyone for the participation and comments.

Mr. Benser called for the presentation of Wetlands Protection and recognized Ms. Martha Little. Ms. Little stated that this guidance document had also been pulled because of the concerns of localities. Ms. Little noted that a letter had been written in response to Norfolk, and that CBLAD staff had also presented some of the issues about shoreline management to the Coastal Policy Team. At that meeting, Tony Watkinson of the VMRC recommended that the JPA process was being updated and that staff should consider putting some information in this document referencing Bay Act RPA requirements in order to streamline the process. Mrs. Little said that plans are to meet again in February about this and, for that reason, no other changes will be made to the guidance.

Mr. Benser asked if there were any questions. Mr. Lerch questioned the decision to defer so many of the proposed guidance documents, which will increase the amount of staff time dedicated to continue working on the guidance documents. These documents are for the benefit of the localities, and he pointed out that one of the JLARC report comments was that the Department needed to focus its limited resources on compliance evaluations and reviewing local implementation of the program on the ground.

Mr. Benser called for a motion to adjourn the meeting. Mr. Davis motioned, Ms. Bamforth seconded. The meeting was adjourned at 12:30 p.m.